

Senate Bill 929 (Kehoe)
Coastal Commission: lobbyists
Version: Amended 4/21/2005
Status: In Senate Appropriations

Summary

As amended, this bill would expand the definition of "administrative action" to include quasi-judicial decisions before the California Coastal Commission, thus expanding the definition of lobbyist to those seeking to influence those decisions. The Senate Elections Committee took amendments, not yet reflected in the bill, to apply this expansion only to direct communication with members of the Coastal Commission; communication with staff on quasi-judicial matters would not trigger the lobbyist registration and reporting requirements.

Recommendation

Staff recommends the Commission adopt a position of "neutral" on this measure.

Background

Under current law, anyone who receives \$2,000 or more in a calendar month, or who spends one-third or more of their time as an employee, to communicate with any elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action is a lobbyist.

"Administrative action" includes the proposal, drafting, development, consideration, amendment, enactment, or defeat by any state agency of any rule, regulation, or other action in any ratemaking proceeding or any quasi-legislative proceeding.

The Coastal Commission is a voter-created body of 12 voting (and 4 non-voting) members which, in partnership with coastal cities and counties, regulates land use and water issues in the coastal zone. Development activities, defined by the Coastal Act to include construction of buildings, divisions of land, and activities that change the intensity of use of land or public access to coastal waters, generally require a coastal permit from either the Coastal Commission or the local government.

Under the Political Reform Act, most of these land-use decisions are not included in the definition of administrative action, because they fall into the category of quasi-judicial decisions.

Purpose of the bill: Senator Kehoe has authored SB 929 in order to let the public know who is lobbying the Coastal Commission on these land use decisions, what they're lobbying for, and how much money they're spending to do it. She and the bill's supporters believe that well-funded parties with financial interests before the Commission receive much greater access to the Commission than does the general public.

Analysis

Under the Administrative Procedures Act, members of most state agencies conducting quasi-judicial hearings are banned from having ex parte communications with lobbyists or interested parties. But the Coastal Act provides a specific exemption with respect to ex parte communications regarding permit applications and other similar proceedings, as long as the communications are disclosed.

During the Senate Elections Committee hearing, the committee's chairman expressed concern over the application of the bill to community groups and individual homeowners who might pay the threshold \$2,000 to an attorney or other representative to shepherd a permit application through the Commission, or to oppose an application. This bill would render those groups and individuals lobbyist employers, subject to the registration and quarterly reporting requirements of Chapter 6. In order to address this concern, an amendment was proposed to apply the bill's expansion to quasi-judicial proceedings only to communications with Coastal Commissioners. Communications with staff over these types of decisions would not trigger the lobbying rules.

Another approach AB 771 (Saldana) subjects ex parte communications with members of the Coastal Commission to the Administrative Procedures Act. That bill passed the Assembly Natural Resources Committee on April 25, 2005, and was re-referred to the Assembly Judiciary Committee. If AB 771 passes and is signed into law, SB 929 would not likely be pursued.

Staff comments If SB 929 were enacted, it would represent the only instance where quasi-judicial proceedings are included in the conduct that triggers lobbyist registration and reporting. Staff observes that taking the ex parte issue head-on, as provided in AB 771, would both bring the Coastal Commission's ex parte rules in line with those applicable to other state agencies, and prevent creation of this special lobbying rule for the Coastal Commission. However, if SB 929 were to become law, it could be implemented without great difficulty or cost to our agency.